

**Responses to Public Comments on
“Precautionary Approach” Working Definition
February 4, 2005**

1. Comments from the California Council for Environmental and Economic Balance (CCEEB), supported/endorsed by:

Consumer Specialty Product Association
California Business Properties Association
Western States Petroleum Association
Chemical Industry Council of California
Western Growers
California Independent Petroleum
Western Plant Health Association
California Chamber of Commerce
Industrial Environmental Association
California Chamber of Commerce

Comment 1: “Environmental justice programs should use clearly defined terms. CCEEB supports Cal/EPA’s effort to define “precautionary approaches” or “precautionary approach” under the Action Plan. CCEEB believes that environmental justice programs should clearly define terms. Clear terms allow Cal/EPA and stakeholders from various sectors of the public (including communities and businesses) to have to the same understanding of Agency policies.”

Response 1: At this time, staff acknowledges that some of the terms such as "reasonable threat", etc., within "the definition" are implicit in nature. However, it is our intent to allow the implementation, review, and analysis of the pilot projects to fashion these terms more explicitly, with further context and meaning.

Comment 2: “The EJ Action Plan’s sections on precautionary approaches are based on a recognition that Cal/EPA and the BDOs already use a precautionary approach in many of their programs.”

Response 2: The Cal/EPA Environmental Justice Advisory Committee (CEJAC) recognized that many programs implemented by Cal/EPA are precautionary in nature. However, additional precaution may be needed in order to address or prevent environmental justice problems. In the next phase of the EJ Action Plan, staff will inventory where/how precautionary approaches are used in Cal/EPA’s environmental programs.

Comment 3: “CCEEB suggests that Cal/EPA define ‘precautionary approach’ as:

‘Precautionary approach’ means the application of judicious and responsible decision making based on best available science and on the weighing of the level of scientific uncertainty and the potential risk of damage. A precautionary approach is based on the recognition that the absence of full scientific certainty shall not be used as a reason for postponing decisions where there is a risk of serious or irreversible harm.

...We believe that this suggested definition captures the precautionary approach that Cal/EPA uses in its science-based decision-making.”

Response 3: Staff has taken CCEEB’s suggested definition into consideration. We believe that staff’s proposed definition of “precautionary approaches” captures the spirit of this comment.

Comment 4: “Several entities have made statements on (or ‘definitions’ of) the use of precaution. What becomes critical for ensuring that implementation is reasonable and not extreme is not just the definition but additionally what are the guidelines or guiding principles for implementation.”

Response 4: This is a working definition that will be adjusted accordingly as it is applied to the pilot projects. As stated in the EJ Action Plan, Cal/EPA and its BDOs will strive to avoid extreme interpretations and seek options that do not have an adverse economic impact on the community, jobs, and rural and local governments.

2. Comments from the Industrial Environmental Association

Comment: EJAC recognizes that Cal/EPA and BDOs already use precautionary approach in many of their programs.

Response: The CEJAC recognized that many programs implemented by Cal/EPA are precautionary in nature. However, additional precaution may be needed in order to address or prevent environmental justice problems. In the next phase of the Cal/EPA EJ Action Plan, staff will inventory where/how precautionary approaches are used in Cal/EPA’s environmental programs.

3. Comments from the California Seed Association

Comment 1: Without a clearly stated definition of precautionary approaches, it will be impossible to develop a successful plan.

Response 1: The first phase of the EJ Action Plan required the development of a common working definition. Therefore, with public input and a review of current precautionary definitions, Cal/EPA staff has developed a proposed working definition of precautionary approach. It is staff’s intent to allow the implementation, review, and analysis of the pilot projects to fashion these terms more explicitly, with further context and meaning.

Comment 2: Setting parameters for cost effectiveness will maintain a level of fairness for all Californians.

Response 2: Identifying cost-effective approaches that could be used to prevent or minimize adverse environmental impacts is part of Objective 2.1 of the Cal/EPA EJ Action Plan. This will be considered in later phases of the Action Plan when we inventory current precautionary approaches, determine where additional precaution is needed, and develop guidance.

4. Comments from the California Farm Bureau Federation

Comment 1: Precautionary approach must be clearly defined.

Response 1: The first phase of the EJ Action Plan required the development of a common working definition. Staff acknowledges that some of the terms such as "reasonable threat", etc., within "the definition" are implicit in nature. However, it is our intent to allow the implementation, review, and analysis of the pilot projects to fashion these terms more explicitly, with further context and meaning.

Comment 2: Application of precaution should be clearly explained and justified and the impacts of applying precaution should be fully disclosed.

Response 2: Given that this is a working definition, the application will be further defined and justified in the subsequent phases of the action plan. After staff proceeds with the next phases, the impacts of applying precaution will be apparent through the pilot projects.

Comment 3: Decisions based on precautionary approaches should be reconciled with the best available science.

Response 3: The proposed definition includes the concept of best available science.

5. Comments from the Fresno Coalition Against the Misuse of Pesticide

Comment: The precautionary principle is an approach to safeguard the health of ourselves and our planet. Common sense must be used. The precautionary approach should lead one to question the health risks of "pesticides"

Response: Staff has taken this comment into consideration. Staff agrees that the precautionary approach is a method to protect public health and the environment.

7. Comments from the San Diego Air Pollution Control District

Comment: Interagency Working Group (IWG) should assess when precautionary approaches are needed.

Response: The IWG is responsible for making the final decision regarding the working definition of precautionary approach. Under the direction of the Secretary and the IWG, staff will evaluate whether additional precaution may be warranted in Cal/EPA environmental programs.

8. Comments from the California Environmental Rights Alliance

Comment 1: Cal/EPA should rely on the work of the Science and Environmental Health Network when developing "a common, objective working definition for precautionary approaches."

Response 1: Cal/EPA staff relied on many sources of information when developing the definition of precautionary approaches, including the Science and Environmental Health Network. Other sources included:

- California Health and Safety Code, section 39650(e)
- The U.S. Commission on Ocean Policy
- Principle 15 from the United Nations' Rio Declaration

- The City and County of San Francisco’s Department of the Environment
- Government of Canada
- *Protecting Public Health and the Environment*, edited by Carolyn Raffensperger and Joel Tickner
- *Making Better Environmental Decisions* by Mary O’Brien
- Input received through public workshops and written comments from stakeholders

Comment 2: “In its most basic form, a precautionary approach relies upon the best available science to prompt anticipatory action to protect public health and the environment given a reasonable threat of harm and in the absence of scientific certainty.”

Response 2: Staff believes that its proposed definition of “precautionary approaches” captures the spirit of this comment.

Comment 3: “Based on the work of Dr. Ted Schettler, Dr. Katherine Barrett, and Ms. Carolyn Raffensperger, a precautionary approach can be defined as (1) setting goals, (2) assessing alternatives (i.e., asking whether it is possible to avoid harm while achieving established goals), (3) adopting a transparent, inclusive, and open decision-making process, (4) analyzing assumptions and uncertainty, (5) adjusting the burden for evidence of safety and the responsibility for associated liabilities to be proportionate to the lack of scientific certainty and the potential for serious and irreversible harm, and (6) learning and adapting (i.e., systematically revisiting decisions and making necessary adjustments).” This definition is based on Schettler, T., K. Barrett, and C. Raffensperger, 2002, *The Precautionary Principle*. In *Life Support: The Environment and Human Health* (M. McCally, Ed.), Cambridge, MA: MIT Press.

“We suggest that Cal/EPA review the work of Dr. Schettler and his colleagues for a more comprehensive understanding and explanation of this definition.”

Response 3: These publications are available to the staff involved in the precautionary approach efforts, and they will be part of the body of information and references to be considered by staff in developing the guidance.

Comment 4: “Cal/EPA should also consider creating a database of clean and low-polluting alternatives to assist communities in evaluating proposals that may include polluting activities. This database should also include a list of possible mitigation measures available to communities and local decision makers.”

Response 4: This will be considered during subsequent phases of the Cal/EPA Environmental Justice Action Plan, when we inventory current precautionary approaches, determine where additional precaution is needed, and develop guidance.

9. Comments from the American Chemistry Council

Comment 1: “The Cal/EPA EJ Action Plan definition must include language that ensures decisions are based on accurate, reliable, reproducible, and unbiased information. This involves the use of the best available science and supporting studies in accordance with sound and objective scientific practices, including, peer reviewed science and supporting studies.”

Response 1: Staff believes that its proposed definition of “precautionary approaches” captures the spirit of this comment.

Comment 2: “A Cal/EPA ‘precautionary approach’ must ensure an open, public, and transparent process and any implementation must be fair, consistent, and clear to ensure that all stakeholders have the same understanding of regulatory policies.”

Response 2: Staff agrees with the comment. In accordance with the action plan, Cal/EPA BDOs will improve tools for public participation and community capacity-building.

Comment 3: *Precautionary approaches should include cost-effective measures.* “Any ‘precautionary approach’ definition should consider the benefits of the activity or project in assessing what, if any, action is necessary. While new technologies can carry certain risks, it is important to note that a decision to avoid certain risks poses its own, perhaps even greater danger.”

Response 3: Identifying cost-effective approaches that could be used to prevent or minimize adverse environmental impacts is part of Objective 2.1 of the Cal/EPA Environmental Justice Action Plan. This will be considered in later phases of the Action Plan when we inventory current precautionary approaches, determine where additional precaution is needed, and develop guidance.

10. Comments from the Environmental Justice Coalition for Water

Comment: Legal duties and power of public trust doctrine have provided authority and criteria for responsible approaches to taking reasonable precautionary action in the absence of complete scientific knowledge.

Response: Staff has noted your comments and will further explore the concept of public trust doctrine in relationship to the pilot projects.

11. Comments from the Public Trust Alliance

Comment 1: Building a reasonable framework within which prudent precautionary action can be taken before public resources are lost to irreversible processes can be integrated and performed with the public trust framework

Response 1: The proposed definition of precautionary approach uses the wording “reasonable threat of serious harm” which implies taking action prior to irreversible or serious harm. In ensuing phases of the Environmental Justice Action Plan, staff will explore the applicability of the proposed definition to the pilot projects. Subsequently, Cal/EPA BDOs will recommend implementation options including proposals for policy, regulatory and statutory integration. In addition, a goal of the Environmental Justice Action Plan is to improve tools for public participation and community capacity building to increase public awareness.

Comment 2: Supreme Court of Hawaii recently recognized the “precautionary principle” as a brief restatement of the traditional obligations of public trustees in protecting particularly important resources.

Response 2: As a result of your comment, staff reviewed the Hawaii Supreme Court Public Trust decision.